United Nations ST/SGB/2017/2/Rev.1

Secretariat

28 November 2017

Secretary-General's bulletin

Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations

The Secretary-General, for the purpose of ensuring that the Organization functions in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations, and in accordance with paragraph 161 (d) of General Assembly resolution 60/1, paragraph 6 of Assembly resolution 70/255 and paragraph 44 of Assembly resolution 71/263, promulgates the following:

Section 1
General

1.1 It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action. An individual who makes such a report in good faith has the right to be protected against retaliation.

1.2 It is also the duty of staff members to cooperate with duly authorized audits and investigations. An individual who cooperates in good faith with an audit or investigation has the right to be protected against retaliation.

1.3 Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view.

1.4 Retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in an activity protected by the present policy as set out in section 2 below ("protected activity").

Section 2
Protected activity

2.1 Protection against retaliation applies to any staff member (regardless of the type of appointment or its duration), intern, United Nations volunteer, individual contractor or consultant who:

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(a) Reports the failure of one or more staff members to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, including any request or instruction from any staff member to violate the above-mentioned regulations, rules or standards, or reports wrongdoing by any person that, if established, would be manifestly harmful to the interests, operations, or governance of the Organization. In order to receive protection, the report should be made as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred; or

(b) Cooperates in good faith with a duly authorized investigation or audit.

2.2 The present bulletin is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment. However, the burden of proof shall rest with the Administration to demonstrate by clear and convincing evidence that it would have taken the same action absent the protected activity referred to in section 2.1 above or that the alleged retaliatory action was not taken for the purpose of punishing, intimidating or injuring the individual who engaged in the protected activity.

2.3 The transmission or dissemination of unsubstantiated rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.

Section 3
Reporting misconduct through established internal mechanisms

Except as provided in section 4 below, reports of misconduct should be made through the established internal mechanisms: to the Office of Internal Oversight Services (OIOS), the Assistant Secretary-General for Human Resources Management, the head of department or office concerned or the focal point appointed to receive reports of sexual exploitation and abuse. It is the duty of the Administration to protect the confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.

Section 4
Reporting misconduct through external mechanisms

Notwithstanding staff regulation 1.2 (i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

(a) Such reporting is necessary to avoid:

(i) A significant threat to public health and safety; or

(ii) Substantive damage to the Organization's operations; or

(iii) Violations of national or international law; and

(b) The use of internal mechanisms is not possible because:

(i) At the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or

(ii) It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or

(iii) The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; and

(c) The individual does not accept payment or any other benefit from any party for such report.

Section 5
Prevention action

5.1 OIOS will inform the Ethics Office of any report of wrongdoing received that OIOS identifies as posing a retaliation risk. OIOS will provide this information to the Ethics Office only upon the consent of the individual who made the report.

5.2 When informed by OIOS of an individual who is at risk of retaliation, the Ethics Office will consult with the individual on appropriate retaliation prevention action. With the individual's consent, such action may include engagement by the Ethics Office with the individual's senior management to ensure monitoring of the individual's workplace situation with a view to preventing any retaliatory action against the individual as a consequence of his or her engaging in a protected activity.

Section 6
Reporting retaliation to the Ethics Office

6.1 Individuals who believe that retaliatory action has been taken against them because they have engaged in a protected activity may submit a request for protection against retaliation to the Ethics Office in person, by regular mail, by email or through the Ethics Office helpline. They should forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible.

6.2 Requests for protection against retaliation must be submitted to the Ethics Office no later than six months after the date on which the individual knew, or in the opinion of the Ethics Office should have known, that the alleged retaliatory action was taken.

Section 7
Preliminary review by the Ethics Office

7.1 Upon receipt of a complaint of retaliation or threat of retaliation, the Ethics Office will conduct a preliminary review of the complaint to determine whether (a) the complainant engaged in a protected activity; and (b) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

7.2 The Ethics Office shall maintain the confidentiality of all communications received from complainants who request protection against retaliation, and from all relevant third parties. Complainants may authorize the Ethics Office to contact any office or staff member to obtain additional information and records related to their request for protection. However, the Ethics Office may be required to cooperate with requests for information from United Nations oversight bodies or from the United Nations Dispute Tribunal or the United Nations Appeals Tribunal in the course of their official functions.

7.3 All offices and staff members shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that are not available without the express consent of the staff member concerned and OIOS records that are subject to confidentiality requirements.

7.4 The Ethics Office will seek to complete its preliminary review within 30 days of receiving all information requested concerning a complaint of retaliation submitted.

7.5 If the Ethics Office determines that there is no prima facie case of retaliation or threat of retaliation, it shall so notify the complainant in writing. Should the Ethics Office determine in such cases that there is an interpersonal problem within a particular office, it may additionally advise the complainant of the mandate of the Office of the Ombudsman or of the existence of other informal mechanisms of conflict resolution in the Organization.

7.6 If the Ethics Office determines that there is no prima facie case of retaliation or threat of retaliation but considers there to be a managerial problem relating to a particular department or office, it will advise the head of department or office concerned and, if it considers it appropriate, the Secretary-General.

7.7 If the Director of the Ethics Office is of the opinion that there is an actual or potential conflict of interest in his or her reviewing a request for protection against retaliation, he or she shall decide on whether to refer the request to an alternative reviewing body, including the alternate Chair of the Ethics Panel of the United Nations.[1]

Section 8
Ethics Office action if a prima facie case exists

8.1 If the Ethics Office considers that there is a credible case of retaliation or threat of retaliation, it will refer the matter in writing to OIOS for investigation and will immediately notify in writing the complainant that the matter has been so referred. The Ethics Office will also undertake such action if it is recommended in accordance with section 9 below. OIOS will seek to complete its investigation and submit its report to the Ethics Office within 120 days.

8.2 Where, in the opinion of the Ethics Office, there may be a conflict of interest in OIOS conducting the investigation as referred to in section 8.1 above, the Ethics Office may recommend to the Secretary-General that the complaint be referred to an alternative investigating mechanism.

8.3 Pending completion of the investigation, the Ethics Office may recommend that the Secretary-General take appropriate measures to safeguard the interests of the complainant, including, but not limited to, temporary suspension of the implementation of the action reported as retaliatory; with the consent of the complainant, temporary reassignment of the complainant and/or change of reporting lines; or, for staff members, placement of the complainant on special leave with full pay. For individual contractors or consultants, such interim measures shall not include reinstatement or extension of an engagement beyond its original date of completion.

8.4 Upon receipt of the investigation report, the Ethics Office will conduct an independent review of the findings of the report and supporting documents to determine whether the report and the supporting documents show, by clear and convincing evidence, that the Administration would have taken the alleged retaliatory

[1] Pursuant to ST/SGB/2007/11/Amend.1, the Ethics Panel of the United Nations consists of the heads of the Ethics Offices of the separately administered organs and programmes of the United Nations and the Ethics Office of the United Nations Secretariat.

action absent the complainant's protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the complainant. If, in the view of the Ethics Office, this standard of proof is not met, the Ethics Office will consider that retaliation has occurred. If the standard of proof is met, the Ethics Office will consider that retaliation has not occurred. In all cases, the Ethics Office will inform the complainant in writing of its determination and make its recommendations to the head of department or office concerned and to the Under-Secretary-General for Management. Those recommendations may include that the matter be referred to the Assistant Secretary-General for Human Resources Management for possible disciplinary procedures or other action that may be warranted as a result of the determination.

8.5 If the Ethics Office considers that there has been retaliation against a complainant, it may, after taking into account any recommendations made by OIOS or other concerned office(s) and after consultation with the complainant, recommend to the head of department or office concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation, including, but not limited to: the rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office and/or function and/or change of reporting lines. For individual contractors or consultants, such measures shall not include reinstatement or extension of an engagement beyond its original date of completion.

8.6 Subject to all relevant due process rights, including rights under chapter X of the Staff Rules, recommended measures may also include transfer of the person who allegedly engaged in retaliation.

8.7 The head of department or office concerned shall provide a written decision to the complainant and the Ethics Office on the recommendations of the Ethics Office within 30 days. Subject to section 8.7 below, the decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.

8.8 Should the Ethics Office not be satisfied with the response from the head of department or office concerned, it can make a recommendation to the Secretary-General. The Secretary-General will provide a written decision on the recommendations of the Ethics Office to the complainant, the Ethics Office and the department or office concerned within 30 days.

8.9 Complainants will be informed on a confidential basis of any disciplinary sanctions imposed for the retaliatory action.

Section 9
Review of Ethics Office determinations

9.1 If, following a determination by the Ethics Office under section 7.5 or 7.6 above that there is no prima facie case of retaliation or threat of retaliation, the complainant wishes to have the matter reviewed further, he or she may, within 30 days of notification of the determination, refer the matter, in writing, to the alternate Chair of the Ethics Panel of the United Nations.

9.2 The alternate Chair of the Ethics Panel will seek comments from the complainant and the Administration on the request for review and undertake his or her own independent review of the matter, which shall include review of the action previously taken by the Ethics Office and a determination of any additional action required, including whether referral for investigation is warranted under section 8.1 above. The alternate Chair of the Ethics Panel, following the completion of his or her review, will submit his or her recommendations to the Ethics Office. The Ethics Office

will implement the recommendations of the alternate Chair of the Ethics Panel, including any recommendation to refer the matter to OIOS for investigation pursuant to section 8.1 above.

9.3 If the alternate Chair of the Ethics Panel is of the opinion that there is an actual or potential conflict of interest in his or her reviewing the matter, he or she shall decide on an alternative reviewing body, including possible referral of the matter to another member of the Ethics Panel.

Section 10
Review of administrative decisions under chapter XI of the Staff Rules

10.1 The action, or non-action, of the Administration on a recommendation from the Ethics Office under section 8 above will constitute a contestable administrative decision under chapter XI of the Staff Rules if it has direct legal consequences affecting the terms and conditions of appointment of the complainant, and may be contested within the deadlines specified under those Rules.

10.2 Staff members are reminded that they may seek to challenge any administrative decision that they consider to be retaliatory under chapter XI of the Staff Rules. Such recourse must comply with the deadlines specified under those Rules.

10.3 Recommendations of the Ethics Office and the alternate Chair of the Ethics Panel under the present bulletin do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Rules.

Section 11
Prohibition of retaliation against outside parties

If established, any retaliatory measures against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the United Nations because such person has reported misconduct may lead to disciplinary or other appropriate action.

Section 12
Annual review of implementation of the present policy

On an annual basis, the Secretary-General shall review and assess the terms and implementation of the present policy.

Section 13
Entry into force

13.1 The present bulletin shall enter into force on its date of issuance.

13.2 Secretary-General's bulletin ST/SGB/2017/2, entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" is hereby superseded.

13.3 The provisions of the present bulletin shall prevail over any inconsistent provisions contained in other administrative issuances currently in force.

(*Signed*) António **Guterres**
Secretary-General